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Attorneys for TSUBURAYA

PRODUCTIONS CO. LTD.

UNITED STATES DISTRICT COURT

CENTRAL DISTRICT OF CALIFORNIA

WESTERN DIVISION

UM CORPORATION, a Japanese
corporation,

Plaintiff,

vs.

TSUBURAYA PRODUCTIONS CO.
LTD., a Japanese corporation,

Defendant.

CASE NO. 2:15-cv-03764-AB-AJW

**DECLARATION OF TOMOHIRO
TOHYAMA IN SUPPORT OF
TSUBURAYA'S OPPOSITION TO
UMC's MOTION FOR JUDGMENT
ON THE PLEADINGS OR, IN THE
ALTERNATIVE, SUMMARY
JUDGMENT**

Trial Date: August 22, 2017

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1 TSUBURAYA PRODUCTIONS CO.
2 LTD., a Japanese corporation,

3 Counterclaimant,

4
5 vs.

6 UM CORPORATION, a Japanese
7 corporation; ULTRAMAN USA, INC.,
8 a California corporation; SOMPOTE
9 SAENGDUENCHAI, a Thai individual;
10 GOLDEN MEDIA GROUP, INC., a
11 California corporation; TIGA
12 ENTERTAINMENT COMPANY,
13 LTD., a Hong Kong corporation; and
14 DOES 1-10,

15 Counterdefendants.
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DECLARATION OF TOMOHIRO TOHYAMA

I, Tomohiro Tohyama, declare as follows:

1. I make this declaration of personal, firsthand knowledge, and, if called and sworn as a witness, I could and would testify competently thereto.

2. I am an attorney licensed to practice in Japan. I have been a practicing attorney for over 35 years. I represented Tsuburaya in the lawsuit Mr. Sompote filed against Tsuburaya in the Tokyo District Court in 2006 and its appeals ("Japan II").

3. I have reviewed the brief filed by UMC relating to the foreign judgments regarding Ultraman, including its descriptions of an earlier lawsuit in Japan in 1997 ("Japan I," as to which I represented Tsuburaya at the time of its appeal to the Supreme Court of Japan) and Japan II. There are a number of mischaracterizations of those proceedings that would be apparent to someone with an understanding of Japanese law, such as a practicing attorney in Japan.

4. The Japanese legal system does not have discovery. Also, there is no mechanism to take depositions. The only way to force submission of any particular document is to obtain an order of the court. Accordingly, in the Japanese lawsuits relating to Ultraman, Tsuburaya could not obtain documents or deposition testimony that would have helped Tsuburaya to show the court that Sompote had forged the 1976 Agreement.

5. Because Tsuburaya was unable to get the original 1976 Agreement, and because signed documents are presumed valid under Japanese law, the court in Japan I held partly on that basis that Tsuburaya did not meet its burden of proving a forgery.

6. In Japan II, the district court issued a decision on September 30, 2010. That decision, however, was reversed by the intermediate court. In Japan,

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1 there is authority recognizing that a decision of a lower court that is reversed on
2 appeal is not binding.

3 7. Even assuming the 1976 Agreement is genuine, there are a number of
4 authorities under Japanese law that could support Tsuburaya's position that the
5 contract has been terminated.

6 8. The 1976 Agreement, by its own terms as set forth in Article 2,
7 purports to be an agreement "for indefinite period."

8 9. Tsubuaraya sent letters dated July 10, 2014 to Mr. Sompote, Mr.
9 Perasit and UMC that state that it is terminating the 1976 Agreement.

10 10. There are a number of authorities under Japanese law that support the
11 position that, for contracts of an indeterminate length, a party can terminate by
12 giving notice, even when the contract does not contain a termination provision.

13 11. Article 617 of the Civil Code in Japan, addressing leases, states that
14 contracts of an indefinite period can be terminated at will under Japanese law. *See*
15 Article 617 ("If the parties do not specify the term of a lease, either party may
16 request to terminate it at any time.").

17 12. There are numerous precedents where Japanese courts rely on Article
18 617 to allow parties to terminate contracts of an indefinite length other than
19 leases. For example, the Tokyo District Court relied on Article 617 and applied it
20 to a consignment contract (Tokyo District Court, September 30, 1981).¹ In that
21 case, involving a continuous supply contract for books and magazines that had no
22 specific term, the court applied Article 617 of the Civil Code by analogy because the
23 contract, like a lease, involved continuous obligations. The Court held that Article
24 617 shall be applied by analogy and, accordingly, defendants could immediately

25
26 ¹ I understand that counsel for Tsuburaya in the U.S. lawsuit is obtaining
27 certified English translations of the Japanese court decisions I reference in this
28 declaration.

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1 terminate the contract if there is a compelling reason (such as the plaintiff acting
2 significantly unfaithful) and, if not, the defendants could terminate it with advance
3 notice or when compensation for the subject term is paid.

4 13. The Tokyo High Court issued a similar decision in a case involving a
5 supply contract for chemical building materials (Tokyo High Court, December 24,
6 1984). There, the court held that, in a continuous sales agreement with no
7 specified term, it is reasonably understood that in the future either party may
8 terminate a contract by expressing his/her intention to terminate the contract and
9 providing adequate notice, even if such agreement to terminate at will was not part
10 of the contract. The court further held that if a compelling reason made it difficult
11 for a party to expect continuation of the contract, such as significant unfaithfulness
12 of the other party, a party could also immediately terminate the contract.

13 14. Furthermore, the Okayama District Court issued a decision involving
14 an advertising broadcast contract, holding that, when there is an indefinite term, a
15 party may unilaterally terminate the contract at any time by expressing its intent to
16 do so (Okayama District Court, March 24, 1970).

17 15. There are other holdings like these where courts recognize the general
18 principle that contracts of an indefinite period are terminable with notice, even if the
19 contract does not contain a termination provision. *See, e.g.*, Tokyo District Court
20 Decision, September 12, 1974 (termination of sales contract); Mito District Court
21 Decision, September 5, 1983 (termination of supply contract).

22 16. There may be a factual question as to whether there was consideration
23 for the 1976 Agreement. Should the Court or fact-finder find that the 1976
24 Agreement did not have a compensation provision, Article 597 may be applied.
25 Article 597 states that, for items provided to another party: "If the parties have not
26 specified the timing of the return and the purposes of the using and taking profits,
27 the lender may demand the return of the borrowed Things at any time."
28

1 17. Separate and apart from these provisions and precedents of the
2 Japanese Civil code, there is support in Japanese law that could support Tsuburaya's
3 position that the material breach of a license agreement allows termination. *See,*
4 *e.g.,* Tokyo High Court, December 24, 1984 (stating that a party may immediately
5 terminate a contract if there is a compelling reason that makes it difficult for a party
6 to expect continuation of the contract, such as significant unfaithfulness of the other
7 party).

8 18. I declare under penalty of perjury under the laws of the United States of
9 America that the foregoing is true and correct.

10 Executed on this 15th day of August, 2016, at Tokyo, Japan

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13 
14 TOMOHIRO TOHYAMA